

From: [Payne, James](#)
To: [Harrison, Ben](#); [Coleman, Sam](#); [Gray, David](#); [Phillips, Pam](#)
Cc: [Edlund, Carl](#); [Carroll, Craig](#)
Subject: FW: Information and Recordkeeping Obligations and Guidance for Responding to Hurricanes Harvey, Irma, and Any Additional Storms
Date: Thursday, September 7, 2017 1:00:56 PM
Attachments: [How to Save Text Messages- Quick Reference Guide.pdf](#)
[Mobile and Portable Devices and Records FAQs.PDF](#)

Ben – as discussed, please coordinate with Sam, David, Pam and others for Kevin M’s records-related message below to be forwarded broadly within the region, as requested by Kevin M below. My suggestion would be to add a short bullet summary as part of the forwarding email. Jim

From: Minoli, Kevin

Sent: Tuesday, September 05, 2017 6:23 PM

To: Szaro, Deb <Szaro.Deb@epa.gov>; McCabe, Catherine <McCabe.Catherine@epa.gov>; Rodrigues, Cecil <rodrigues.cecil@epa.gov>; Glenn, Trey <glenn.onis@epa.gov>; Heard, Anne <Heard.Anne@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Coleman, Sam <Coleman.Sam@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brennan, Thomas <Brennan.Thomas@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Fine, Steven <fine.steven@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Kavlock, Robert <Kavlock.Robert@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>; Kling, David <Kling.Dave@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Allen, Reginald <Allen.Reginald@epa.gov>

Cc: Eoc, Epahq <Eoc.Epahq@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Payne, James <payne.james@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Coe, Mary <Coe.Mary@epa.gov>; Wilkes, Mary <Wilkes.Mary@epa.gov>

Subject: Information and Recordkeeping Obligations and Guidance for Responding to Hurricanes Harvey, Irma, and Any Additional Storms

Dear Colleagues— I appreciate the hard work you and your staffs are have been doing in response to the devastation caused by Hurricane Harvey and know that many additional EPA employees have begun working to prepare for and respond to Hurricane Irma. We are now also monitoring another storm that could reach hurricane strength and be named Jose that is

a few days behind Irma. These emergency situations require the agency to act quickly to address real threats to life and the environment, and so time to address issues regarding recordkeeping and information management is often in short supply. At the same time, history tells us that the public, states, Congress, and the media are extremely interested in evidence of how we are operating throughout an emergency like these and that we will receive a significant number of FOIA and other requests for information related to our response. To date, we have already received 15 FOIA requests related to Hurricane Harvey.

In an effort to allow response personnel to keep their main focus on the response and to reduce the time and resources necessary to respond to information requests on that response, OGC has developed the following message reminding employees of their ongoing obligations and suggesting best practices for all of us. **My request of you is that you please disseminate the message below to any of your staff involved in, or likely to be involved in, any of the current or future hurricane relief efforts.** As with all of our work, we need to ensure that we are complying with our recordkeeping obligations and be prepared to respond to the many FOIA requests we are likely to receive pertaining to our response efforts, and we can do that most effectively and efficiently if we provide our employees with this guidance now. The information below is intended to provide our staffs with the information they need in order to comply with recordkeeping obligations while doing this important work. We have included a point of contact here in OGC and in the Offices of Regional Counsel for Regions 2, 3, 4, and 6, and we will ensure coordination across all of our legal offices to ensure we provide consistent guidance in response to any questions we receive. While those regions represent the ones most likely to have a significant number of employees engaged in response work, every region and headquarters office is likely to contribute some staff to the effort, which is why I am sending this to all regions and headquarters offices.

If you have any questions regarding the guidance or my request that you distribute it within your organizations as appropriate, please do not hesitate to ask. I can be reached by email, by my office line (202-564-8040), or by my work mobile (202-297-6910). Thank you in advance for your assistance.

Kevin

attorney work product / attorney-client communication

RECORDKEEPING OBLIGATIONS FOR WORK ON HURRICANES

Thank you for your continuing efforts to support EPA's response to Hurricane Harvey and other hurricanes we may be called upon to respond to this hurricane season. As you work, please remember the need to comply with federal recordkeeping laws and Agency policy. Set forth below is specific information of which you should be aware. And, as with all Agency records, please remember that **these documents will likely be requested by and often released to the public.**

Text Messages

While we understand that use of text messaging is often essential in these types of situations, please remember that **you must forward any text messages that constitute Agency records to EPA's recordkeeping system**, such as your email account. If you cannot do this within the prescribed 20 days, please reach out to your management or one of the points of contact below for assistance. For additional information, see the EPA Quick Reference Guide: How to Save Text Messages, <http://intranet.epa.gov/mobiledevices/pdf/How-to-Save-Text-Messages-QRG1.pdf> (also attached for those unable to access the intranet).

All Documents and Emails

Because many communications related to Hurricane Harvey and are likely to be responsive to Freedom of Information Act requests, please **use the term "hurricane" or "Harvey" (or name of the hurricane or storm you are working on) in any emails or other documents you create**. This will greatly enhance our ability to perform a comprehensive collection of electronic documents pertaining to specific hurricanes in the future.

Preservation of All Hurricane Communications

Because it is unlikely you will know when a FOIA request for information pertaining to Hurricane Harvey or any other hurricane is received by the Agency, the most prudent course of action is to **preserve all communications in any way related to the hurricane response effort**, including all text messages. Even if they do not constitute a federal record under the Federal Records Act, they will be documents covered by FOIA as soon as a request is received by the Agency. To date, the agency has already received 15 FOIA requests related to Hurricane Harvey.

Use of Personal Devices

As with other agency business, all official business related to hurricane response should be done on Agency devices, not on personal devices. EPA strongly discourages the use of personal mobile devices for sending or receiving Agency records. If such use does occur, then the person **creating or sending the record from a non-EPA device must copy his/her EPA email account at the time of transmission or must forward that record to his/her EPA email account within 20 days of creation or sending**. For additional information, please see the EPA Frequent Questions About Mobile and Portable Devices and Records, <http://intranet.epa.gov/records/faqs/pda.html> (also attached for those unable to access the intranet).

Who to Contact with Questions or for Assistance

If you have specific questions, please contact any of the following attorneys who are available to help ensure you understand your obligations and how to comply with them:

Peter Bermes (OGC/FEAT): 312-886-6631 or bermes.peter@epa.gov

Liliana Villatora (R2/ORC): 212-637-3218 or villatora.liliana@epa.gov

Andrew Goldman (R3/ORC): 215-814-2487 or
goldman.andrew@epa.gov

Keith Weisinger (R4/ORC): 404-562-9696 or
weisinger.keith@epa.gov

Mark Ford (R6/ORC): 214-665-7336 or ford.mark@epa.gov

Thank you for all you are doing to help protect human health and the environment in response to these natural disasters, and thank you in advance for your assistance in ensuring you and the agency comply with our responsibilities to generate, preserve, and produce information related to these efforts.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040